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AMENDED IN ASSEMBLY JULY 14, 2009

AMENDED IN ASSEMBLY JUNE 30, 2009

AMENDED IN SENATE MAY 28, 2009

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AMENDED IN SENATE APRIL 27, 2009

SENATE BILL

No. 218

Introduced by Senator Yee

(Coauthors: Senators Calderon, DeSaulnier, Dutton, and Runner)

(Coauthors: Assembly Members Beall, DeVore, Furutani, Nielsen,
Portantino, and Smyth Silva, Smyth, Torrico, and Tran)

February 23, 2009

An act to ~~add Section 92034 to~~ *amend Sections 72670 and 89901 of,*
and to add Section 92034 to, the Education Code, to amend Section
6252 of, and to add Section 6254.30 to, the Government Code, relating
to public records.

LEGISLATIVE COUNSEL'S DIGEST

SB 218, as amended, Yee. Public records: state agency: auxiliary
organizations.

The California Public Records Act requires state and local agencies
to make their records available for public inspection and to make copies
available upon request and payment of a fee unless ~~they~~ *those records*
are exempt from disclosure. The act defines the terms "local agency"
and "state agency" for purposes of the act.

This bill would revise the definition of the term “local agency” to additionally include *specified* auxiliary organizations established for the purpose of providing support services and specialized programs for the general benefit of a community college.

This bill would revise the definition of the term “state agency” to additionally include ~~any entity in which an official of the University of California or the California State University participates as a director as part of his or her official duties, or any entity that has as its purpose to promote the campuses of either institution. The bill would include any entity whose governing instrument provides that it is to receive gifts, property, and funds to be used for the benefit of either institution, and has any of its directors, governors, or trustees either appointed or nominated by the respective institutions. The bill would also include any entity that has any of its directors, governors, or trustees appointed, nominated, or subject to approval by the regents or trustees and whose purpose is to promote the regents or the trustees, or to receive gifts, property, and funds on behalf of the regents or trustees~~ *specified auxiliary organizations and other specified entities.*

~~The bill would also include in the definition of “state agency” any entity that is designated as an auxiliary organization by the regents or the trustees.~~

The bill would exempt from disclosure under the California Public Records Act the names of individuals who donate to specified entities if those individuals request anonymity. However, the bill would provide that this exemption does not apply if a donor, in a quid pro quo arrangement, receives anything that has more than a nominal value in exchange for the donation.

This bill would also provide that it is the intent of the Legislature to reject the court’s interpretation of state law regarding the application of the act to auxiliary organizations, such as the CSU Fresno Association, at issue in *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 72670 of the Education Code is amended
2 to read:

1 72670. The governing board of a community college district
2 may establish auxiliary organizations for the purpose of providing
3 supportive services and specialized programs for the general benefit
4 of its college or colleges. As used in this article, “auxiliary
5 organization” may include, but is not limited to, the following
6 entities:

7 (a) Any entity in which any official of a community college
8 district participates as a director as part of his or her official
9 position.

10 (b) Any entity formed or operating pursuant to Article 4
11 (commencing with Section 76060) of Chapter 1 of Part 47.

12 (c) Any entity ~~which~~ *that* operates a commercial service for the
13 benefit of a community college or district on a campus or other
14 property of the district.

15 (d) Any entity whose governing instrument provides in substance
16 both of the following:

17 (1) Its purpose is to promote or assist a community college or
18 district, or to receive gifts, property, and funds to be used for the
19 benefit of the community college or district or any person or
20 organization having an official relationship therewith.

21 (2) Any of its directors, governors, or trustees are either
22 appointed or nominated by, or subject to, the approval of the
23 governing board of the district, an official of the district, or
24 selected, ex officio, from the membership of the student body or
25 the faculty or the governing board or the administrative staff of
26 the district.

27 (e) Any entity ~~which~~ *that* is designated as an auxiliary
28 organization by the district governing board.

29 (f) *Nothing in this section shall require an entity described in*
30 *this section to disclose information that is exempt from disclosure*
31 *pursuant to Section 99040, Section 3426.1 of the Civil Code,*
32 *Section 1060 of the Evidence Code, or subdivision (k) of Section*
33 *6254 of the Government Code.*

34 SEC. 2. Section 89901 of the Education Code is amended to
35 read:

36 89901. As used in this article, the term “auxiliary organization”
37 includes the following entities:

38 (a) Any entity in which any official of the California State
39 University participates as a director as part of his or her official
40 position.

(b) Any entity formed or operating pursuant to Article 1 (commencing with Section 89300) of Chapter 3.

(c) Any entity ~~which~~ *that* operates a commercial service for the benefit of a campus of the California State University on a campus or other property of the California State University.

(d) Any entity whose governing instrument provides in substance both of the following:

(1) That its purpose is to promote or assist any campus of the California State University, or to receive gifts, property, and funds to be used for the benefit of such campus or any person or organization having an official relationship therewith.

(2) That any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of an official of any campus of the California State University, or selected, ex officio, from the membership of the student body or the faculty or the administrative staff of campus.

(e) Any entity whose governing instrument provides in substance both of the following:

(1) That its purpose is to promote or assist the trustees of the California State University, or to receive gifts, property, and funds to be used for the benefit of the trustees of the California State University or any person or organization having an official relationship therewith.

(2) That any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the trustees or an official of the California State University, or selected, ex officio, from the membership of the trustees or the administrative staff of the California State University.

(f) Any entity which, exclusive of the foregoing subdivisions of this section, is designated as an auxiliary organization by the trustees.

(g) *Nothing in this section shall require an entity described in this section to disclose information that is exempt from disclosure pursuant to Section 99040, Section 3426.1 of the Civil Code, Section 1060 of the Evidence Code, or subdivision (k) of Section 6254 of the Government Code.*

SECTION 1.

SEC. 3. Section 92034 is added to the Education Code, to read:

92034. Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code applies to the following entities:

(a) An entity in which an official of the University of California participates as a director as part of his or her official duties.

(b) An entity that operates a commercial service for the benefit of a campus of the University of California on a campus or other property of the University of California.

(c) An entity whose governing instrument provides in substance both of the following:

(1) That its purpose is to promote or assist any campus of the University of California, or to receive gifts, property, and funds to be used for the benefit of that campus or any person or organization having an official relationship therewith.

(2) That any of its directors, governors, or trustees are either appointed or nominated by, or subject to the approval of, an official of any campus of the University of California, or serve, ex officio, from the membership of the student body or the faculty or the administrative staff of a campus.

(d) Any entity whose governing instrument provides in substance both of the following:

(1) That its purpose is to promote or assist the Regents of the University of California, or to receive gifts, property, and funds to be used for the benefit of the Regents of the University of California, or any person or organization having an official relationship therewith.

(2) That any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the Regents or an official of the University of California, or serve, ex officio, from the membership of the regents or the administrative staff of the University of California.

(e) An entity that is designated by the regents as an auxiliary organization of the University of California.

(f) Nothing in this section shall require an entity described in this section to disclose information that is exempt from disclosure pursuant to Section 99040, Section 3426.1 of the Civil Code, Section 1060 of the Evidence Code, or subdivision (k) of Section 6254 of the Government Code.

1 ~~SEC. 2.~~

2 SEC. 4. Section 6252 of the Government Code is amended to
3 read:

4 6252. As used in this chapter:

5 (a) “Local agency” includes a county; city, whether general law
6 or chartered; city and county; school district; municipal
7 corporation; district; political subdivision; or any board,
8 commission or agency thereof; an entity ~~organized pursuant to~~
9 ~~described in subdivision (b), (d), or (e) of Section 72670 of the~~
10 Education Code, ~~except as provided in subdivision (c) of that~~
11 ~~section~~; other local public agency; or entities that are legislative
12 bodies of a local agency pursuant to subdivisions (c) and (d) of
13 Section 54952.

14 (b) “Member of the public” means any person, except a member,
15 agent, officer, or employee of a federal, state, or local agency
16 acting within the scope of his or her membership, agency, office,
17 or employment.

18 (c) “Person” includes any natural person, corporation,
19 partnership, limited liability company, firm, or association.

20 (d) “Public agency” means any state or local agency.

21 (e) “Public records” includes any writing containing information
22 relating to the conduct of the public’s business prepared, owned,
23 used, or retained by any state or local agency regardless of physical
24 form or characteristics. “Public records” in the custody of, or
25 maintained by, the Governor’s office means any writing prepared
26 on or after January 6, 1975.

27 (f) “State agency” means all of the following:

28 (1) (A) Every state office, officer, department, division, bureau,
29 board, and commission or other state body or agency.

30 (B) An organization ~~operating pursuant to described in~~
31 ~~subdivision (b), (d), (e), or (f) of Section 89901 of the Education~~
32 Code, ~~except as provided in subdivision (c) of that section.~~

33 (C) An organization ~~operating pursuant to described in~~
34 ~~subdivision (c), (d), or (e) of Section 92034 of the Education Code;~~
35 ~~except an entity that operates a commercial service for the benefit~~
36 ~~of a campus of the University of California on a campus or other~~
37 ~~property of the University of California.~~

38 (2) “State agency” does not include those agencies provided for
39 in Article IV (except Section 20 thereof) or Article VI of the
40 California Constitution.

(g) “Writing” means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

~~SEC. 3.~~

SEC. 5. Section 6254.30 is added to the Government Code, to read:

6254.30. Nothing in this chapter shall be construed to require disclosure of the names of individuals who donate to an entity described in Section 72670, ~~89300~~, 89901, or 92034 of the Education Code ~~or to a nonprofit entity described in subdivision (f) of Section 6252~~, if those individuals request anonymity. This exemption does not apply if a donor, in a quid pro quo arrangement, receives anything that has more than a nominal value in exchange for the donation.

~~SEC. 4.~~

SEC. 6. It is the intent of the Legislature in enacting this act to construe and clarify the meaning and effect of existing law and to reject the court’s interpretation of state law regarding the application of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) to auxiliary organizations, such as the CSU Fresno Association, at issue in *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810.

~~SEC. 5.~~

SEC. 7. The Legislature finds and declares that ~~Section 3~~ 5 of this act imposes a limitation on the public’s right of access to writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following finding to demonstrate the interest protected by this limitation and the need for protecting that interest: The Legislature finds and declares that in order to protect the privacy of individuals who donate to specified entities and request anonymity, it is necessary to exempt those individuals’ names from disclosure.